

**In the Supreme Court of the State of Idaho**

**IN RE: IDAHO CODE OF JUDICIAL CONDUCT**

# ORDER AMENDING IDAHO CODE OF JUDICIAL CONDUCT

The Court having reviewed a recommendation to amend the Canons, and being fully informed;  
NOW, THEREFORE, IT IS HEREBY ORDERED, that Canon 4C(3)(b)(iii) of the Idaho Code  
of Judicial Conduct be, and hereby is, amended as follows:

## CANON 4

**A Judge Shall So Conduct the Judge's Extra-Judicial Activities as to Minimize the Risk of Conflict With Judicial Obligations**

**A. Extra-judicial Activities in General.** A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge; or
- (2) interfere with the proper performance of judicial duties.

## Commentary

Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

**B. Avocational Activities.** A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law,\* the legal system, and the administration of justice, subject to the requirements of this Code.

## Commentary

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.

In this and other Sections of Canon 4, the phrase “subject to the requirements of this Code” is used, notably in connection with a judge’s governmental, civic or charitable activities. This phrase is included to remind judges that the use of permissive language in various Sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

### **C. Governmental, Civic or Charitable Activities.**

**(1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law,\* the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge’s interests.**

## Commentary

See Section 2B regarding the obligation to avoid improper influence.

**(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law,\* the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.**

## Commentary

Section 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system or administration of justice as authorized by Section 4C(3). The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should

not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.

Section 4C(2) does not govern a judge's service in a nongovernmental position. See Section 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system or the administration of justice and with educational, religious, charitable, fraternal or civic organizations not conducted for profit. For example, service on the board of a public educational institution, unless it were a law school, would be prohibited under Section 4C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Section 4C(3).

**(3) A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.**

#### **Commentary**

Section 4C(3) does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system or the administration of justice; see Section 4C(2).

See Commentary to Section 4B regarding use of the phrase "subject to the following limitations and the other requirements of this Code." As an example of the meaning of the phrase, a judge permitted by Section 4C(3) to serve on the board of a fraternal institution may be prohibited from such service by Sections 2C or 4A if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge.

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to Section 4C. For example, a judge is prohibited by Section 4G from serving as a legal advisor to a civic or charitable organization.

**(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization**

**(i) will be engaged in proceedings that would ordinarily come before the judge, or**

**(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.**

## Commentary

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

**(b) A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise:**

**(i) may assist such an organization in planning fund raising, may participate in support activities related to the fund raising, may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds.**

**(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law,\* the legal system or the administration of justice;**

**(iii) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation, provided that a judge may encourage participation by a lawyer or lawyers in pro bono activities as long as the encouragement is not coercive in nature.**

## Commentary

While a judge may not use the prestige of judicial office for membership solicitation, a judge may solicit membership or endorse or encourage membership efforts for an organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control.

Use of an organization letterhead for fund-raising or membership solicitation does not violate Section 4C(3)(b) provided the letterhead lists only the judge's name without judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

A judge must not be a speaker, master of ceremonies, or guest of honor at an organization's fund-raising event, but mere attendance at such an event is permissible if otherwise consistent with this Code.

**D. Financial Activities.**

**(1) A judge shall not engage in financial and business dealings that:**

**(a) may reasonably be perceived to exploit the judge's judicial position, or**

**(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.**

**Commentary**

When a judge acquires, in a judicial capacity, information, such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain. See Section 2B; see also Section 3B(11).

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge's court. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification. With respect to affiliation of relatives of a judge with law firms appearing before the judge, see Commentary to Section 3E(1) relating to disqualification.

Participation by a judge in financial and business dealings is subject to the general prohibitions in Section 4A against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Section 2B against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See Commentary for Section 4B regarding use of the phrase "subject to the requirements of this Code."

**(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family,\* including real estate, and engage in other remunerative activity.**

## Commentary

This Section provides that, subject to the requirements of this Code, a judge may hold and manage investments owned solely by the judge, investments owned solely by a member or members of the judge's family, and investments owned jointly by the judge and members of the judge's family.

**(3) A judge shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity except that a judge may, subject to the requirements of this Code, manage and participate in:**

**(a) a business closely held by the judge or members of the judge's family,\* or**

**(b) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.**

**(c) for "senior judges," a business entity exclusively engaged in mediation or alternative dispute resolution as permitted by Idaho Code §§1-2005 and 1-2221. Provided, however, that this shall not permit a "senior judge" to be a member of or be "of counsel" to, or share office space with a law firm.**

## Commentary

Subject to the requirements of this Code, a judge may participate in a business that is closely held either by the judge alone, by members of the judge's family, or by the judge and members of the judge's family.

Although participation by a judge in a closely-held family business might otherwise be permitted by Section 4D(3), a judge may be prohibited from participation by other provisions of this Code when, for example, the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in a closely-held family business if the judge's participation would involve misuse of the prestige of judicial office.

**(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.**

**(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household,\* not to accept, a gift, bequest, favor or loan from anyone except for the following:**

**(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar related function or an activity devoted to the improvement of the law,\* the legal system or the administration of justice;**

### **Commentary**

Section 4D(5) does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 5.

Because a gift, bequest, favor or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

Acceptance of an invitation to a law-related function is governed by Section 4D(5)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Section 4D(5)(h).

A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See Sections 4A(1) and 2B.

**(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;**

**(c) ordinary social hospitality;**

**(d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;**

## **Commentary**

A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Section 4D(5)(e).

**(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Section 3E;**

**(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;**

**(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or**

**(h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge.**

## **Commentary**

Section 4D(5)(h) prohibits judges from accepting gifts, favors, bequests or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

### **E. Fiduciary Activities.**

**(1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary,\* except for the estate, trust or person of a member of the judge's family,\* and then only if such service will not interfere with the proper performance of judicial duties.**

**(2) A judge shall not serve as a fiduciary\* if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.**

**(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary\* capacity.**



## **Commentary**

The Time for Compliance provision of this Code (Application, Section F) postpones the time for compliance with certain provisions of this Section in some cases.

The restrictions imposed by this Canon may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of Section 4D(4).

**F. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.\***

## **Commentary**

Section 4F does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial duties or as permitted by Idaho Code §§ 1-2005(7) and 1-2221(7).

**G. Practice of Law. A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family. Employees of the judicial branch of government, other than judges, shall not engage in the practice of law except that a judicial employee may act pro se, may perform routine legal work incident to the management of the personal affairs of the judicial employee or a member of the judicial employee's family, and may provide pro bono legal services in civil matters, so long as such pro se, family, or pro bono legal work does not present an appearance of impropriety, does not take place while on duty or in the judicial employee's workplace except as may be permitted by the Idaho Supreme Court, and does not interfere with the judicial employee's primary responsibility to the office in which the judicial employee serves, and further provided that:**

- (1) in the case of pro se legal work, such work is done without compensation;**
- (2) in the case of family legal work, such work is done without compensation and does not involve the entry of an appearance in a federal or state court;**
- (3) in the case of pro bono legal services, such work (a) is done without compensation; (b) does not involve the entry of an appearance in any federal or state court or administrative agency; (c) does not involve a matter of public controversy, an issue likely to come before the judicial**

employee's court, or litigation against federal, state or local government; and (d) is reviewed in advance with the appointing authority to determine whether the proposed services are consistent with the foregoing standards and the other provisions of this code.

Judicial employees may also serve as uncompensated mediators or arbitrators for nonprofit organizations, subject to the standards applicable to pro bono practice of law, as set for above, and the other provisions of this code.

## **Commentary**

This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in doing so, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family. See Section 2(B).

The Code allows a judge to give legal advice to and draft legal documents for members of the judge's family, so long as the judge receives no compensation. A judge must not, however, act as an advocate or negotiator for a member of the judge's family in a legal matter.

A "senior judge" may engage in activities permitted by Idaho Code §§ 1-2205(7) and 1-2221(7).

## **H. Compensation and Reimbursement.**

(1) **Compensation and Reimbursement.** A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

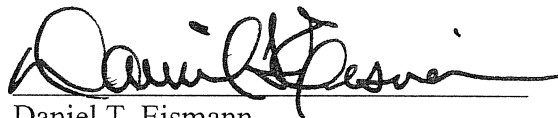
## Commentary

The Code does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

IT IS FURTHER ORDERED, that this amendment shall be effective on the 22<sup>nd</sup> day of April, 2010.

DATED this 28 day of April, 2010.

By Order of the Supreme Court



Daniel T. Eismann  
Chief Justice

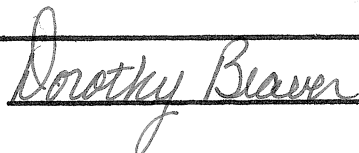
ATTEST:

  
Clerk

I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the Order entered in the above entitled cause and now on record in my office.

WITNESS my hand and the Seal of this Court 4/28/10

STEPHEN W. KENYON

By:  Clerk  
Deputy